2010 WL 1279866 (Idaho) (Appellate Brief)
Supreme Court of Idaho.

R. Drew THOMAS, Plaintiff/Appellant,
v.
Ronald O. THOMAS, Elaine K. Thomas and Thomas Motors, Inc., an Idaho Corporation, Defendants/Respondents.

No. 36857-2009.
March 24, 2010.

Gem County Case No. CV-2006-492
Appeal from the District Court of the Third Judicial District for Gem County. Honorable Juneal C. Kerrick, District Judge presiding.

**Respondents' Brief**

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### A. *NATURE OF THE CASE.*

This is a case involving a son suing his **elderly** parents for substantial **financial** damages for losses he allegedly sustained when his father sold an unprofitable car dealership to a third party. Plaintiff/Appellant R. Drew Thomas (hereinafter "Plaintiff") brought suit against his **elderly** parents Defendants/Respondents Ronald O. Thomas and Elaine K. Thomas (hereinafter "Ron" and "Elaine," or collectively "Defendants") to recover damages that Plaintiff allegedly incurred upon the sale of Defendants' car dealership. Plaintiff's original Complaint alleged five separate causes of action against Defendants. As set forth below, the only substantive cause of action at issue in this appeal is a claim by Plaintiff for unjust enrichment based upon the theory of quasi-contract. For the reasons set forth herein, the Court should affirm the District Court's rulings in all respects.

### B. *COURSE OF PROCEEDINGS BELOW.*

The course of Proceedings described in Appellant's Brief is substantially accurate. Plaintiff filed his original Complaint in this matter on June 21, 2006. R. Vol. I, p.23. In his Complaint, Plaintiff alleged five causes of action against Defendants. Each cause of action was based upon the failure of Defendants to transfer a car dealership owned by Defendants to Plaintiff. Plaintiff alleges that the car dealership should have been transferred to him, rather than sold to an unrelated investment group. R. Vol. I, p.23 - p.32. The causes of action alleged by Plaintiff included Breach of Contract (oral); Breach of the Implied Covenant of Good Faith and Fair Dealing; Quasi-Contract; ***2** Breach of Contract (in the alternative); and, Fraud. *Id.* Defendants filed an Answer to Plaintiff's Complaint and denied all substantive allegations enumerated by Plaintiff. R. Vol. I, p.34 - p.38.

On July 24, 2007, approximately one year after Plaintiff filed his Complaint, Defendants moved the District Court for summary judgment on each of Plaintiff's five causes of action. R. Vol. I, p.140. Plaintiff opposed Defendants' Motion for Summary Judgment in its entirety. On October 11, 2007, the District Court heard oral argument on Defendants' Motion for Summary Judgment. Tr. Vol. I, p. 1 - p.94. On November 26, 2007, the District Court issued its Order on Defendants' Motion for Summary Judgment. R. Vol. IV, p.742. The District Court granted part of Defendants' Motion for Summary Judgment and denied part of Defendants' Motion.

Specifically, the District Court denied Defendants' motion as it related to Plaintiff's causes of action for Breach of Contract (oral) and Breach of Implied Covenant of Good Faith and Fair Dealing. R. Vol. IV, p.752 - p.753. The District Court granted Defendants' motion to dismiss Plaintiff's causes of action for Quasi-Contract, Breach of Contract (in the alternative), and Fraud. R. Vol. IV, p.753 - p.759. Following the District Court's ruling on Defendants' Motion for Summary Judgment, Plaintiff proceeded with the prosecution of his remaining claims for Breach of Contract (oral) and Breach of Implied Covenant of Good Faith and Fair Dealing.

After further discovery, on March 18, 2008, Defendants moved the District Court for partial summary judgment on one specific aspect of Plaintiff's remaining claims. R. Vol. IV, p.739. Defendants requested that the District Court find, as a matter of law, that the agreement (if any) ***3** between Plaintiff and Defendants regarding the transfer of the car dealership to Plaintiff, did not include the transfer of any real property owned by Defendants. R. Vol. IV, p.739 - p.740. On May 19, 2008, the District Court granted Defendants' Motion for Partial Summary Judgment. R. Vol. IV, p.795 - R. Vol. V, p.804. The District Court found that any promise or agreement to transfer the car dealership to Plaintiff did not and could not include an agreement or promise to transfer any real property. *Id.*

On April 9, 2009, Defendants again moved the District Court for summary judgment on Plaintiff's remaining claims for Breach of Contract (oral) and Breach of the Implied Covenant of Good Faith and Fair Dealing. R. Vol. V, p.957. Plaintiff opposed Defendants' Second Motion for Summary Judgment. On May 7, 2009, the District Court heard oral argument on Defendant's Motion. Tr. Vol. I, p.95 - p.132. On May 18, 2009, the District Court entered its Order granting Defendants' Second Motion for Summary Judgment. R. Vol. VI., p. 1075. The District Court determined that the parties had not entered into a valid or enforceable contract for the transfer the car dealership from Defendants to Plaintiff. Accordingly, the District Court granted Defendants' Second Motion for Summary Judgment and dismissed Plaintiff's remaining causes of action for Breach of Contract (oral) and Breach of the Implied Covenant of Good Faith and Fair Dealing. R. Vol. VI, p. 1085 - p. 1086. Upon the dismissal of these claims, Plaintiff no longer retained any causes of action against Defendants.

Following the dismissal of all of Plaintiff's claims, Defendants filed a Motion for Award of ***4** Attorney's Fees and Costs. R. Vol. VI, p.1088 - p.1132. Plaintiff opposed the motion and filed various briefs in opposition. On June 22, 2009 the District Court heard oral argument on Defendants' Motion for Award of Attorney's Fees and Costs. Tr. Vol. I, p.134 - p.161. On July 31, 2009, the District Court entered an Order On Plaintiff's Motion to Disallow Costs and Fees, wherein the District Court awarded Defendants costs in the amount of $2,334.81, and attorney fees in the amount of $115,749.20. R. Vol. VI, p.1169 - p.1178. On August 19, 2009, Judgment was entered in favor of Defendants for $118,084.01. R. Vol. VI, p.1166 - p.1167.

On August 27, 2009, Plaintiff filed a Notice of Appeal, which sought appellate review of several of the District Court's rulings. R. Vol. VI, p.1183 - p.1187. Upon the filing of his brief, Plaintiff limited his appeal to the District Court's rulings relative to Plaintiff's unjust enrichment claim and the award of Defendants' attorney's fees. It is important to note that the District Court dismissed Plaintiff's claims for Breach of Contract (oral); Breach of the Implied Covenant of Good Faith and Fair Dealing; Breach of Contract (in the alternative); and, Fraud. Plaintiff did not appeal any of these rulings by the District Court. Accordingly, for all purposes relating to this appeal, it is now conclusively established that Plaintiff never had a valid and enforceable contract with Defendants for the transfer of Defendants' car dealership to Plaintiff.

**C. *STATEMENT OF FACTS.***

The only substantive issue appealed by Plaintiff is whether the District Court erred in dismissing Plaintiff's claim for unjust enrichment. The crux of Plaintiff's claim is that Plaintiff had ***5** an implied-in-fact contract (or quasi-contract) with Defendants, pursuant to which Plaintiff provided services to Defendants that unjustly enriched Defendants. In the proceedings below, the District Court determined that an express employment contract existed between Plaintiff and Defendants and, as a result, a cause of action for unjust enrichment against Defendants could not stand. As a result, the only facts that are truly relevant to this appeal are those facts surrounding the express employment agreements between Plaintiff and Defendants. If an express employment agreement exists between Plaintiff and Defendant, then the District Court's ruling must be affirmed. Nonetheless, a little bit of background information will be helpful to the Court in providing the foundation for the employment agreements between Plaintiff and Defendants.

Prior to the events alleged in Plaintiff's Complaint, Defendant Ron Thomas had worked in the business of selling cars for the better part of 30 years in Emmett, Idaho. R. Vol. I, p. 172. Ron worked as a salesman for Johannsen Motors in Emmett for approximately 26 years until about 1995. *Id.* In approximately 1995, Ron purchased some real property in Emmett and opened up his own used car sales business called “Lot of Cars.” *Id.* Within a couple of years of opening “Lot of Cars,” the owner of Johannsen Motors, for whom Ron had previously worked, approached Ron about the possibility of purchasing Johannsen Motors. *Id.* Ron eventually agreed to purchase Johannsen Motors. *Id.* Defendants Ron and Elaine Thomas purchased Johannsen Motors in 1997. *Id.* Shortly after the purchase of Johannsen Motors, Defendants became approved franchisees of Dodge and Chrysler for new car sales. R. Vol. I, p.172 - p.173. Following the franchise approval, Defendants ***6** renamed the new car dealership “Thomas Motors.” *Id;* R. Vol. II, p.343.

According to Plaintiff, at the time that Defendants were contemplating buying Johannsen Motors, Ron approached Plaintiff about the prospect of going to work for the car dealership as a sales manager. R. Vol. II, p.281 - p. 282. At that time, Plaintiff was working for Lanny Berg Chevrolet New and Used Car Dealership in Caldwell, Idaho. *Id.* Plaintiff had been working for Lanny Berg for approximately 8 years, primarily as a salesman. R. Vol. II, p.276. For the last six months of his employment at Lanny Berg, Plaintiff testified he worked as a new car sales manager. R.Vol. II, p.277.

Plaintiff further claims that he and Ron had a number of discussions prior to the purchase of Johannsen Motors regarding the the prospect of Plaintiff going to work for Ron at the new car dealership. R.Vol. II, p.281 - p.282. The substance of these discussions, as alleged by Plaintiff, was that Ron told Plaintiff that if Plaintiff came to work for Ron's new car dealership, upon Ron's retirement, at or about 63 years old, the dealership would be transferred to Plaintiff.[1] *Id.* Plaintiff testified that Ron specifically told Plaintiff that the, “dealership would be yours.” R. Vol. II, p.283. Plaintiff testified that he agreed to leave Lanny Berg and to work for Ron at the new car dealership in the Fall of 1997. R. Vol. II, p.279.

***7** Plaintiff testified that his agreement to leave Lanny Berg, and to go to work for Ron's new business, was communicated to Ron “a month or two” before he actually started working there. R. Vol. II, p.288. It is undisputed that none of the discussions regarding Plaintiff's role with Thomas Motors were reduced to writing at that point in time. *Id.*

Plaintiff alleges that he and Ron came to an oral agreement sometime in 1997 regarding the transfer of the dealership, which would occur at some point in the future. R. Vol. II, p. 283. The terms of the alleged oral agreement that Plaintiff claims he reached with his dad in 1997 were extremely vague. *Id.* The “agreement” consisted almost entirely of Ron's simple statement to Plaintiff that “the dealership will be yours” in about 8 years. *Id.* Plaintiff acknowledged the vagueness of this alleged agreement with his own testimony:

Q. Okay. And, of course, you remember I got into this before too, trying to get the specifics of the words used that you can recall that constituted the deal. And I think we've already covered that, right?

A. As good as I believe we can, I suppose.

Q. Okay. And as I understand the substance of what you said, you understood *essentially the terms of the deal were that your dad said, Tf you come to join Thomas Motors as the general manager, the dealership will be yours when I retire at or about 63 years old'; is that a fair statement?*

A. *I'd say that's fair*.

R. Vol. II, p. 288. Thus, the oral agreement that served as the primary basis for Plaintiff's original claims in this lawsuit was not specific in its terms. Due to the vague nature of the alleged agreement, the District Court ruled that the oral agreement to transfer ownership of Thomas Motors to Plaintiff ***8** failed to contain a number of essential and material terms. R. Vol. VI, p.1075 - p. 1087. Accordingly, the District Court ruled that no enforceable contract for the transfer of Thomas Motors ever existed. *Id.* Plaintiff did not appeal this ruling by the District Court; therefore, for purposes of this appeal, it has been established that no enforceable agreement for the transfer of the car dealership ever existed.

Notwithstanding the District Court's ruling, one of Plaintiff's primary factual allegations in his Brief is that Ron agreed to "give" the car dealership to Plaintiff. Plaintiff's assertion that Ron agreed to "give" the dealership to Plaintiff, is not a fair or accurate representation of Plaintiff's own testimony regarding the alleged agreement. The uncontroverted evidence is that Plaintiff knew that if he wanted the dealership, he would have to buy it from Ron. R. Vol. II, p.298. Plaintiff repeatedly testified that Ron *never* expressed any kind of intention, in any of their discussions, that Ron would literally "give" the business to Plaintiff. R. Vol. II, p.294. In the words of Plaintiff;

Now, you've got to remember, too, I never thought that I was going to get this place for free. That never crossed by mind that I'd ever get it for free.

R. Vol. II, p.294. Plaintiff further testified: "I never thought I would get it for free. *I knew I would have to pay something for it.*" R. Vol. II, p.298 (emphasis added).

According to Plamtiff, when Ron allegedly told him that if Plaintiff came to work for Ron in the summer of 1997 that at Ron's retirement some 8 years later "the dealership would be yours", Plaintiff understood that he was going to have to pay for Thomas Motors. Plaintiff and Ron did not ***9** discuss or reach an agreement on what the price of the dealership would be:

Q. You at least understood that you wouldn't be getting the business for nothing, *but there was no specific discussion about what you would have to pay?*

A. *Correct*.

R. Vol. II, p.299 (emphasis added).

The above-quoted testimony was offered by Plaintiff in a deposition taken on June 26, 2007. *Id.* After Defendants filed for summary judgment the first time, Plamtiff filed an opposing affidavit with the Court that largely contradicted Plaintiff's own deposition testimony regarding whether Plaintiff would be required to purchase the dealership, or whether Ron would merely "give" him the dealership. R. Vol. III, p.415 - p.425. In order to clarify Plaintiff's own contradictory testimony, Defendants took a second deposition of Plaintiff. R. Vol. V, p.993. Throughout his sworn testimony in his second deposition, Plaintiff again reiterated the position taken by him in his first deposition, that not only would he not simply be "given" Thomas Motors, Plaintiff would be required to purchase Thomas Motors from Defendants. R. Vol. V, p. 997 - p.1000.

Plaintiff acknowledged that at no point did Ron ever indicate, infer, suggest or agree that the plaintiff would *not* have to pay some form of compensation for getting the business. R. Vol. V, p.997. Plaintiff testified that Ron, consistently and without exception, indicated that Ron needed to get something **financial** out of the business in order for him and his wife to live on

during their retirement years. R. Vol. V, p.998 - p.1000. In other words, the alleged agreement to transfer Thomas Motors to Plaintiff consisted of a promise by Defendants to sell Thomas Motors to Plaintiff ***10** for an unspecified price. *Id.*

Prior to coming to work for the dealership, Plaintiff entered into an employment contract with Ron, whereby Plaintiff agreed to work at the dealership, and Ron agreed to pay Plaintiff for his services to the dealership. R Vol. II, p.283 - p.284. There is no dispute in this case that Plaintiff bargained for a salary and was, in fact, paid the agreed upon salary throughout his employment at Thomas Motors. R. Vol. II, p.285.

In furtherance of his employment contract with Thomas Motors, Plaintiff had specific conversations with Ron regarding his salary. Plaintiff testified:

Q. Okay. *And tell me about any discussions vou had before the day vou actually joined about what salary vou would make.*

A. *He told me he would pay me 2.500 bucks a month*.

Q. When were those discussions, how close in time to when you actually started?

A. Probably a month or so because *I wouldn't have committed without knowing, a month or so prior*. He knew that it was less money at the time and that it would be a lot of work. And it was, but that it would be worth it and it would pay off on me.

R. Vol. II, p.283 - p.284 (emphasis added). Plaintiff further testified that the salary that was agreed to, as part of the employment agreement between himself and Ron, also anticipated incremental raises in salary:

Q. What did you say in response to it? If it was less money than you were historically making at the time at Lanny Berg --

***11** A. It was very much an issue for me, but that he guaranteed me it wouldn't last long. *Once we got the place going, that I would get an incremental raise*. He understood that I was not going to make as much as I had been, and that it would be a lot of work, but that it would pay off.

Q. But that it was temporary, that the amount, *the 2,500 a month was temporary*?

A. *Yes*.

Q. And you guys had that discussion, I suppose?

A. Um-hmm.

Q. Is that right?

A. Yes.

R. Vol. II, p.284 (emphasis added).

Not only did the employment agreement between Plaintiff and Ron *call* for periodic raises, but Plamtiff actually *received* periodic raises as his responsibilities increased;

Q. Now, you previously indicated that your dad had talked to you about this salary being $2,500 a month, but that it would increase as the business got going or something to that effect; is that correct?

A. Correct.

Q. Did it eventually increase?

A. Yes, it did.

Q. And how long did it take before it increased? When was your first raise, if you recall?

***12** A. I believe it was after the first year, year and a half maybe, two at the most. I'd have to look back on my payroll records.

* * *

Q. *Then the subsequent year, 1999, it shoots up to an annual salary of $58,888, right*?

A. *Again, that's correct.*

Q. And, again, is that consistent with what you made in calendar year 1999?

A. I believe that is probably correct.

Q. So it appears, at least by the calendar year 1999, your salary had gone back up to approximately where it had been while you were working for Lanny Berg; is that fair to say?

A. It's close, uh-huh, correct.

R. Vol. II, p.284 - p.285 (emphasis added). In other words, about a year after the Plaintiff started working for Thomas Motors, his salary was increased to the same level he had made before joining Thomas Motors.

Approximately 3 years after Plaintiff began working for Thomas Motors, Plaintiff insisted that he have written contracts with Defendants covering his current employment and salary, his eventual purchase of Thomas Motors, and the leasing and possible eventual purchase of the land on which Thomas Motors operated. R. Vol. II, p.292; R. Vol. II, p. 361. Accordingly, written agreements were prepared by an attorney for these purposes. R. Vol. I, p. 173. It is undisputed that Plaintiff willingly and voluntarily signed the written agreements. R. Vol. II, p.292 - p.293, R. Vol. ***13** II, p.221 - p.223. The attorney who drafted the three agreements was hired and paid by Defendants to prepare the documents, R. Vol. I, p. 173. The documents were formally titled: Agreement for Purchase and Sale of Business Assets; Commercial Lease and Purchase Agreement; and, Management Contract.[2] R. Vol. I, p. 173 - p. 174; 181-223. Of primary importance to this appeal is the Management Contract that was executed by Plaintiff. R. Vol. II, p.292 - p.293. Plaintiff himself acknowledges that the Management Contract was of primary importance to him:

Q. Did you have discussions with your dad over any of the terms of these written agreements, Exhibits 3, 4, and 5?[3]

A. Well, No. 4 [the management contract], I believe -- and this is where I think some people are confused. This agreement here I vaguely -- I remember this was about my raise. This was about in 2000 when I was on vacation in Challis, Idaho, with Heather Strand at her parents' ***14** house. And I got the phone call from Ron Thomas crying --

Q. Your dad was crying?

A. Very, very upset.

Q. Who was crying?

A. Ron. Saying the place is falling down around my ears. I need you to get back here. You know, just very upset, very -- it upset me a lot to be that far away when he was that upset.

But I said, well, you need to get everybody together, tell them what the plan is, and what's going to happen, where we're going with this thing. And then when I get back, we'll see where we stand.

And that's when he got everybody in the showroom, made the announcement. That's when this started happening. Rob and Carl got this together, so I told him I'd stay.

And then these were in progress. These were never at the same time. ***This [management contract] was first. This was so I knew I had the raise, I knew what my responsibilities were supposed to be.*** *These [Agreement for Purchase and Sale of Business Assets; Commercial Lease and Purchase Agreement] were secondary.* And I think there is some confusion with everybody on that. See, Ron's testimony had said these were all three laid out and they signed them. No, that's not correct. This was first; these were second.

Q. The management contract was signed on a date different than Exhibits 3 and 5?

A. To my recollection, yes, sir.

Q. What date was the management contract signed, Exhibit 4?

A. I honestly -- I know it had to be on or around that first day of September, but I cannot tell you exactly what day. But it was not the same time that I signed these.

***This [Management Contract] got the ball rolling to keep*** ***15** ***me there***. This got what Ron perceived to be the ball rolling on how to transfer it to me, I suppose, is what he would be looking at.

Q. So you think the management contract, Exhibit 4, was signed the first day of September 2000 or so?

A. Or so, yes. I believe that's correct.

R. Vol. II, p.292 (emphasis added).

Plaintiff acknowledges he signed all of the written agreements in September of 2000. R. Vol. II, p.292; R. Vol. II, p.297. It is noteworthy that Plaintiff claims that Defendants never actually signed the Agreement for Purchase of Sale of Business Assets or the Commercial Lease and Purchase Agreement (or that Defendants forged their signatures at a later date). R. Vol. II, p.303. Plaintiff further claims that Defendants told him that they were not going to hold Plaintiff to the written agreements. R. Vol. II, p.302 - p.303. Plaintiff also claims the Agreement for Purchase of Sale of Business Assets, and the Commercial Lease and Purchase Agreement that he signed, are actually not of any binding effect or force upon him.[4] R. Vol. II, p.302 - p.303. However, Plaintiff ***16** does not deny the efficacy of the Management Contract. It is undisputed that Plaintiff was compensated, fully and completely, for the services that he rendered to Thomas Motors pursuant to the terms of the Management Contract R. Vol. II, p.306; R. Vol. V, p.1000.

Despite Plaintiff being fully compensated for his services to Thomas Motors, it is undisputed that from its inception Thomas Motors was a **financial** disaster. For most of the years that Thomas Motors was in existence, it lost money at an alarming rate. R. Vol. I, p. 174 - p. 175, R. Vol. II, p.224 - p.232. Plaintiff has testified that at the time the business was sold to an investment group in early 2006, Plamtiff understood the business had approximately $1,000,000 in outstanding debt. R. Vol. II, p.317. He also acknowledged his awareness that at one point the dealership was $300,000 "out of trust" with the bank that provided the loan for the line of credit for the business operation. R. Vol. II, p.295.

Plaintiff even attended a joint meeting in the Fall of 2000 between Thomas Motors' banker and Ron to discuss Thomas Motors' very serious **financial** problems, including the fact that the business was "out of trust" with the line of credit for hundreds of thousands of dollars. *Id.* Ron has testified that Thomas Motors "has been a loser ever since I bought it." R. Vol. II, p.344. Ron testified that he was continually falling behind in his line of credit with the bank; that he was putting money into Thomas Motors from other sources; and, that Thomas Motors ultimately represented a huge drain on his **financial** resources. R. Vol. I, p.175 - p.177, R. Vol. II, p.382.

Towards the end of the calendar year 2005, Defendants determined they had no choice but ***17** to sell Thomas Motors, as it was turning out to be a **financial** disaster. R. Vol. I, p. 177, R. Vol. II, p.382. The company's tax returns confirm the seriousness of Thomas Motors' **financial** woes. R. Vol. II, p.224 - p.232. Most years of Thomas Motors' existence show a loss. The loss in calendar year 2005 alone was in excess of $250,000. R. Vol. II, p.232. The **financial** picture for Thomas Motors was so bad that, by the end of 2005, Ron was unable to attract any buyers for the business so he arranged to put the business up for auction, the effective equivalent of a fire-sale. R. Vol. I, p.177. The business known as Thomas Motors was actually advertised for auction. R. Vol. I, p.177; R. Vol. II, p.383. However, just prior to the scheduled auction, the broker retained by the Defendants for the purpose of selling or auctioning off the business approached Ron about a prospective buyer. R. Vol. I, p.177, R. Vol. II, p.382. The business was, in relatively short order, sold to a group of investors headed by Mr. Bill Buckner. *Id.*

It should be noted that the real estate owned personally by Ron and Elaine Thomas was included in the sale of the business to the group headed by Mr. Buckner. R. Vol. I, p.177 - p.178. The entire deal encompassing the sale of the real property, as well as Thomas Motors, to the Buckner group totaled $2,900.00. R.Vol III, p.481 - p.485. However, the undisputed evidence demonstrates that the value of Thomas Motors, as part of the entire deal, was an almost negligible amount. *Id.* The transaction involving the sale of the real property and the Thomas Motors dealership was finalized in March of 2006. R. Vol. I, p. 177 - p.178.

## ***18 II. *ATTORNEY'S FEES ON APPEAL.***

Attorney's fees may be granted on appeal under *Idaho Code* § 12-121 and *I.A.R.* 41. An award of attorney's fees is appropriate when this Court is left with the abiding belief that the appeal has been brought or defended frivolously or without foundation. *Minich v. Gem State Developers, Inc.*, 99 Idaho 911, 918, 591 P.2d 1078, 1085 (1975). When a party on appeal fails to present any significant issue regarding a question of law, where no findings of fact made by the District Court were clearly or arguably unsupported by substantial evidence, and where this Court is not asked to establish any new legal standards or modify existing ones, the appeal will be deemed to be unreasonable and without foundation. *Vendelin v. Costco Wholesale Corp.*, 140 Idaho 416, 95 P.3d 34 (2004); *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 715, 8 P.3d 1254, 1258 (Ct. App. 2000). In such a case, an award of attorney's fees is proper.

As in the *Vendelin* case, Plaintiff in the preset matter has not presented any significant legal question on appeal. Likewise, the District Court below did not err in granting summary judgment in favor of Defendants. Because Plaintiff's appeal is without merit or foundation, attorney's fees should be awarded to Defendants for defending this appeal.

## **III. *PERTINENT LEGAL STANDARDS OF REVIEW.***

Under Idaho law, a motion for summary judgment should be granted if the court determines that no genuine issue of material fact is found to exist after the pleadings, depositions, admissions, and affidavits have been construed in a light most favorable to the party opposing the summary ***19** judgment. *I.R.C.P.* 56(c). *See also, Harris v. State Dept. of Health*, 123 Idaho 295 P.2d 1156 (1992); *Farmers Ins. Co. v. Brown*, 97 Idaho 380, 544 P.2d 1150 (1976); *Salmon Rivers Sportsman Camps, Inc. v Cessna Aircraft Co.*, 97 Idaho 348, 544 P.2d 306 (1975). The nonmoving party is entitled to the benefit of all the favorable inferences which might reasonably be drawn from the evidence.

However, the nonmoving party's case must not rest upon mere speculation, because a mere scintilla of evidence is not enough to create a genuine issue of material fact. *McCoy v. Lyons*, 120 Idaho 765, 769, 820 P.2d 360, 364 (1991); *G&M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991). Likewise, the nonmoving party may not rest upon mere allegations or denials of that party's pleadings to avoid summary judgment. *I.R.C.P.* 56(c). *See also, Theriault v. A.H. Robbins Co.*, 108 Idaho 303, 698 P.2d 365 (1985). The nonmoving party's response must set forth specific facts showing there is a genuine issue for trial. *I.R.C.P.* 56(c).

In addition, summary judgment is appropriate to dismiss a claim when the plaintiff fails to submit evidence sufficient to establish an essential element of his claim. *See Ambrose v. Buhl Joint School Dist. No. 412*, 126 Idaho 581, 584, 887 P.2d 1088, 1091 (Ct. App. 1994); *Nelson v. City of Rupert*, 128 Idaho 199, 202, 911 P.2d 1111, 1113 (1996). Facts in dispute cease to be material facts when a plaintiff fails to establish a prima facie case. In such a situation, there can be no genuine issue of material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. ***20** *Garzee v. Barkley*, 121 Idaho 771, 774, 828 P.2d 334, 337 (Ct. App. 1992).

The Idaho Supreme Court's review of a District Court's ruling on a motion for summary judgment is the same as that required of the District Court when ruling on the motion. On appellate review, this Court must liberally construe the record in the light most favorable to the party opposing the motion, drawing all reasonable inferences and conclusions in that party's favor. *See Friel v. Boise City Housing Authority*, 126 Idaho 484, 485, 887 P.2d 30, 31 (1994). *See also, Farm Credit Bank of Spokane v. Stevenson*, 125 Idaho 270, 272, 869 P.2d 1365, 1367 (1994); *Harris v. Department of Health & Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992). "If reasonable people could reach different conclusions or draw conflicting inferences from the evidence, the motion must be denied." *Friel*, 126 Idaho at 485, 887 P.2d at 31. If the evidence reveals no disputed issues of material fact, what remains is a question of law, over which this Court exercises free review. Id.

## IV. *LAW AND ARGUMENT.*

### A. *THE DISTRICT COURT DID NOT ERR WHEN IT DISMISSED PLAINTIFF'S CLAIM FOR UNJUST ENRICHMENT.*

The third Count of Plaintiff's Complaint alleges damages against Defendants based upon a theory of "Quasi-Contract" in which Plaintiff claims that Defendants were "unjustly enriched." This claim fails as a matter of Idaho law. The District Court correctly applied the law to the undisputed facts of this case and properly dismissed Plaintiff's claim for quasi-contract.

The term quasi-contract is used interchangeably with the term "unjust enrichment" as well ***21** as the term "contract implied in law." *See e.g., Cannon Builders, Inc. v. Rice*, 126 Idaho 616, 888 P.2d 790 (Ct. App. 1995); *Matter of Estate of Keeven*, 126 Idaho 290, 882 P.2d457 (Ct. App. 1994). The primary modern designation for these terms is simply unjust enrichment. *See Smith v. Smith*, 95 Idaho 477, 511 P.2d 294 (1973).

An action for unjust enrichment is based upon the claim that a defendant has been enriched by a plaintiff, and that it would be inequitable for the defendant to retain the benefit conferred by the plaintiff without compensating the plaintiff for the value of such benefit. *See Gillette v. Storm Circle Ranch*, 101 Idaho 663, 619 P.2d 1116; *BHA Investments Inc. v. State*, 138 Idaho 348, 63 P.3d 474 (2003). The party making the claim of unjust enrichment bears the burden of proof, and must establish facts showing each of the elements necessary for a claim for unjust enrichment. *See Kinzer v. Westgate*, 129 Idaho 621 (Ct. App.

1997); *Hausam v. Schnabl*, 126 Idaho 569, 887 P.2d 1076 (Ct. App. 1994); *Toews v. Funk*, 129 Idaho 316, 924 P.2d 217 (Ct. App. 1994). The Idaho Supreme Court has listed the elements of a prima facie claim of unjust enrichment, or quasi-contract, as follows:

> The elements of unjust enrichment are: (1) a benefit is conferred upon defendant by plaintiff; (2) appreciation by the defendant of the benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment of the value thereof.

*Gibson v. Ada County*, 142 Idaho 746, 759, 133 P.3d 1211 (2006); *In re: Estate of Boyd*, 134 Idaho 669, 8 P.3d (Ct. App. 2000).

***22** A plaintiff claiming that he or she has unjustly enriched another person also bears the burden of proving the damages element in support of the cause of action. Under the theory of unjust enrichment, or quasi-contract, the measure of damages is not the value of any money, labor or materials provided by a plaintiff to a defendant; rather, the measure of damages is "the amount of benefit defendant received which would be unjust for defendant to retain." *Toews v. Funk*, 129 Idaho 316, 322, 924 P.2d 217 (Ct. App. 1994). In other words, when dealing with damages, the focus in a claim for unjust enrichment is on the value of benefit actually realized by the defendant which in good conscience it would be unfair for the defendant to retain without making remuneration to the plaintiff. *See Matter of Estate of Keeven*, 126 Idaho 290, 882 P.2d 457 (Ct. App. 1994); *Toews v. Funk*, 129 Idaho 316, 322, 924 P.2d 217 (Ct. App. 1994).

However, there are certain circumstances under which a claim for unjust enrichment must fail as a matter of law. Idaho law is very clear that a recovery for unjust enrichment cannot be had "where there is an enforceable express contract already covering the same subject matter." *Blaser v. Cameron*, 121 Idaho 1012, 829 P.2d 1361 (Ct. App. 1991). *See also, Marshallv. Bear*, 107 Idaho 201, 687 P.2d 591 (Ct. App. 1984). Furthermore, "[e]quity does not intervene when an express contract prescribes the right to compensation." *Vanderford Co., Inc, v. Knudson*, 144 Idaho 547, 558, 165 P.3d 261, 272 (2007). *See also, Shacocass, Inc. v. Arrington Constr. Co.*, 116 Idaho 460, 464, 776 P.2d 469, 473 (Ct. App. 1989); *Wolford v. Tankersley*, 107 Idaho 1062, 1064, 695 P.2d 1201, 1203 (1984).

***23** In the present case, the essence of Plaintiff's unjust enrichment claim, is that he alleges that he worked long and hard hours at Thomas Motors. Plaintiff alleges he worked these long hours for several years at a lower-than-normal salary based upon the promise of one day becoming the owner of Thomas Motors. What Plaintiff fails to acknowledge is that Plaintiff had an express contract covering his employment with Defendants. Plaintiff's express employment contract is separate and apart from Plaintiff's alleged claim for the transfer of Thomas Motors to him. It is undisputed that Plaintiff went to work at Thomas Motors from 1997 through early 2006, and that Plaintiff was paid a salary, as well as substantial benefits, for such services. Plaintiff is now, in retrospect, unhappy with the salary he received for his services to Thomas Motors, and seeks to re-write his employment contract.

**1. *Plaintiff Had an Express Contract Governing His Salary When He Began Working For Thomas Motors in 1997.***

There is no dispute that Plaintiff had an express employment contract with Thomas Motors pursuant to which he agreed to work at Thomas Motors, and Thomas Motors agreed to pay him for such services. There is also no dispute that Plaintiff was, in fact, paid his agreed upon salary, and benefits, throughout the entire time he was employed at Thomas Motors. Moreover, it is undisputed that about a year and a half into working for Thomas Motors, Plaintiff was given salary raises such that he was making as much or more than he had previously made at any point in his working life. R.Vol II, p.285.

Plaintiff's argument for unjust enrichment fails to account for the fact that there are two ***24** agreements at issue in this matter. First, between the time the dealership was purchased in 1997, until 2000, there was an express oral contract that governed Plaintiff's employment compensation. Second, there was an entirely separate alleged agreement governing the transfer of

Thomas Motors (albeit an unenforceable contract due to the absence of several material terms). Regarding the alleged agreement for the transfer of Thomas Motors to Plaintiff, Plamtiff testified:
Q. Now, you have filed a lawsuit here against your mom and dad alleging, in essence, that he had made a promise to you to give you the dealership, right?

A. He had made a promise to me that upon his retirement, that the dealership would be mine.

Q. And are those kind of the words that you remember him saying?

A. Amongst others.

Q. Well, let's review them all then. Because what I'm hearing you say --

A. I'll do my best.

Q. Thank you.

What I'm hearing you say is your dad, you can specifically recall words to the effect of, “Drew, if you come over, when I retire, the business will be yours,” right?

A. The dealership will be yours.

Q. The dealership will be yours.

Is that pretty close to at least paraphrasing the words he used?

A. That would be fairly accurate.

* * *

***25** Q. Okay. *You're claiming here that your dad made an agreement with you before vou joined Thomas Motors that the dealership would he yours on his retirement, right*?
A. *Correct.*

Q. *That's the substance of your allegation in this case; is that fair to say*?

A. *That's fair*.

Q. Okay. So I'm going to now try to elicit from you -- tell me everything you can remember about specific words used by your dad that in your mind amounted to that agreement that we haven't talked about so far.

A. I believe we've talked about anything he has said through the years up to the date he sold it, that hang in there, stay in there, it's your place. I don't want the place. It's your place.

Q. Okay. That's after you joined?

A. Right.

Q. Okay.

A. But prior to that, it was work it hard, keep your head down, it will be yours. It's your place.

Q. So have you, then, told me essentially all you can remember in the way of specific words used by your dad that amounted to this agreement that's at issue in this lawsuit?

A. I'd have to say yes.

R. Vol. II, p.283 - p.284 (emphasis added). According to Plaintiff, the sum total of the alleged agreement for the transfer of Thomas Motors to Plaintiff was that if he came to work for Thomas ***26** Motors, one day Thomas Motors would be transferred to him.

However, the transfer of Thomas Motors to Plaintiff was not going to come without a price. It is undisputed that Plaintiff knew he was going to have to pay a separate price to Defendants to purchase the dealership. R. Vol. II, p.294; R. Vol. II, p.298 - p.299. Plaintiff testified:
Now, you've got to remember, too, *I never thought that I was going to get this place for free*. This place was -- we came in together, him and I. He had the money. I had the -- I believe the talent and the time and the tenacity to get in there and do whatever it took to make this place work.

*When and up to the time he retires. I expected to cut him and her a check* --

R. Vol. II, p.294. (emphasis added). Accordingly, the agreement to transfer Thomas Motors to Plaintiff was a discrete transaction according to Plaintiff's own testimony. Nonetheless, the District Court noted that the agreement for the sale of Thomas Motors to Plaintiff was lacking in its material terms, and it was unenforceable. Plaintiff has not appealed this ruling by the District Court.

Apart from the alleged agreement regarding the future sale of Thomas Motors to Plaintiff, Plaintiff also had various conversations with Ron regarding the amount of salary Plaintiff would be paid for his employment services. These employment negotiations culminated in an express employment agreement whereby Plaintiff agreed that he would work for Thomas Motors, and in return Thomas Motors agreed to pay Plaintiff a salary. It is important to note that the *salary* was not tied in any way to the eventual transfer of Thomas Motors to Plaintiff:
Q. Okay. *And tell me about any discussions vou had before the day you actually joined about what salary vou would make.*

A. *He told me he would pay me 2,500 bucks a month*.

***27** Q. When were those discussions, how close in time to when you actually started?

A. Probably a month or so because I wouldn't have committed without knowing, a month or so prior. He knew that it was less money at the time and that it would be a lot of work. And it was, but that it would be worth it and it would pay off on me.

Q. He knew it would be less money? How would he know that?

A. Because he knew what I was making at Lanny Berg.

Q. I assume the only way he could know that is you telling him?

A. Um-hmm.

Q. Is that right?

A. Yes.

Q. So you told him how much you were making at Lanny Berg?

A. More than once. He was very proud of me for that.

Q. And when -- in your mind was it him that decided the $2,500 a month salary?

A. Um-hmm.

Q. Is that yes?

A. Yes, that is.

R. Vol. II, p.284 (emphasis added).

In other words, Ron offered Plaintiff a salary for working at Thomas Motors, and Plaintiff accepted the salary. Furthermore, Plaintiff negotiated for, and received, periodic raises in his salary ***28** for the work that he was performing:
Q. What did you say in response to it? If it was less money than you were historically making at the time at Lanny Berg --

A. It was very much an issue for me, but that he guaranteed me it wouldn't last long. *Once we got the place going, that I would get an incremental raise*. He understood that I was not going to make as much as I had been, and that it would be a lot of work, but that it would pay off.

Q. But that it was temporary, that the amount, *the 2,500 a month was temporary*?

A. *Yes*.

Q. And you guys had that discussion, I suppose?

A. Um-hmm.

Q. Is that right?

A. Yes.

Q. And did you have any discussion along the lines of, well, how temporary, for how long?

A. You know, I can't specifically remember setting a time frame on it. I was, in my mind, thinking hopefully it would only be a year and then you'll be able to have a raise because it's pretty difficult to live on almost half of what I was making, but I was willing to make the leap and dig in and try to do what we had to do.

R. Vol. II, p.284 (emphasis added).

It is undisputed that Plaintiff *did* receive several raises throughout his employment with Thomas Motors. R. Vol. II, p.284 - p.285. Plaintiff started at a monthly salary of $2,500 ***29** (approximately $30,000 per year). Within about a year and a half, Plaintiff was earning a yearly salary of $58,888 per year. In other words, within about a year and half, Plaintiff was making every bit as much as he had previously been making at Lanny Berg:

Q. Then the subsequent year, 1999, it shoots up to an annual salary of $58,888, right?

A. Again, that's correct.

Q. And, again, is that consistent with what you made in calendar year 1999?

A. I believe that is probably correct.

Q. So it appears, *at least by the calendar year 1999. your salary had gone back up to approximately where it had been while you were working for Lanny Berg*; is that fair to say?

A. *It's close, uh-huh, correct.*

Q. And then it also appears to me -- *just go through the subsequent years, without reviewing every one of them, that you're making close to the same salary on an annual basis with a couple of spikes here and there*.

A. *Correct.*

Q. Is that fair to say?

A. It is fair to say. I believe part of the money from the '99 Social Security earnings statement here was partly Ron and my salary and the other was Chrysler. Chrysler also pays -- I don't know if you want to call it bonus money, but Chrysler pays money on objectives that you achieve. They send you a separate 1099 for that. So there is a combined income there. It's not just all Thomas Motors.

***30** Q. But it would still be moneys associated with your employment at Thomas Motors?

A. Yes.

R. Vol. II, p.285 (emphasis added).

The above point is raised because Plaintiff has claimed that when he first went to work for Thomas Motors, Plaintiff took the job offer at a "greatly reduced salary." *Appellant's Brief*, p. 15, Whatever the truth of that may be, it is undisputed that in less than two years into his employment with Thomas Motors Plaintiff was making every bit as much as he had ever made in his entire wage earning life. R. Vol. II, p. 285. Furthennore, Plaintiff's salary was certainly commensurate with the monies he had been making at his prior employer, Lanny Berg Chevrolet. *Id.*

More important, however, is the fact that Plaintiff agreed to accept a salary from his employer, and Plaintiff's employer actually paid him the agreed upon salary pursuant to his express employment agreement. While Plaintiff does not specify precisely what "benefit" was purportedly received by Defendants that it would be inequitable for them to retain, it appears that the only possible benefit that the Defendants received from Plaintiff while he worked at Thomas Motors, was the benefit of Plaintiff's employment services. However, *Plaintiff was actually paid for his employment services on the terms that he had agreed to*. In other words, there was an express contract already in place regarding the supposed "benefit" Plaintiff now claims to have bestowed upon Defendants, namely the employment contract pursuant to which Plaintiff was paid the agreed upon salary. As

such, Plaintiff is clearly barred by Idaho law from making any kind of claim for unjust enrichment arising out of his employment services with Thomas Motors. *See* ***31** *Vanderford*, 144 Idaho at 558, 165 P.3d at 272.

Plaintiff has not presented any evidence that he bestowed a benefit upon Defendants outside of his express employment agreement that would be inequitable for Defendants to retain. Plaintiff never contributed any monies to Thomas Motors at any point. Plaintiff did not assume any of the **financial** risks associated with the purchase of Thomas Motors. On the contrary, while Plaintiff was the general sales manager of Thomas Motors, the business lost vast sums of money in 7 of its 9 years of existence. It is undisputed that Defendants are the ones who actually lost every cent of those monies. R. Vol. I, p.174 - p.175. Plaintiff had an express employment contract with Defendants regarding his services to Thomas Motors. That employment contract was separate and apart from the agreement involving the transfer of Thomas Motors. Because the benefit provided to Defendants by Plaintiff was Plaintiff's employment services, for which there was an express contract, Plaintiff's claim for unjust enrichment must fail.

**2. *Plamtiff Renegotiated an Express Written Employment Contract With Thomas Motors for His Employment in 2000 and Beyond.***

Beyond Plaintiff's orally negotiated employment contract for the years 1997-1999, in the year 2000, Plaintiff renegotiated his salary and duties with Thomas Motors and actually signed a written managerial contract with Thomas Motors. The execution of the Management Contract was a condition of Plaintiff's continued employment with Thomas Motors that was actually demanded by Plaintiff. R. Vol. II, p.292; R. Vol. II, p. 361. According to Plaintiff, in the summer of 2000, he was vacationing in Challis, Idaho. R. Vol. II, p.292. Id. Ron called Plaintiff and asked Plaintiff to return to Emmett to assist with some problems at Thomas Motors. *Id.* Plaintiff agreed to return, but *only* ***32** on the condition that Ron make an announcement to Thomas Motors' employees and put together the requisite paperwork regarding Plaintiff's continued employment and the future sale of Thomas Motors. *Id.*

After this conversation with Plaintiff, Ron hired attorney Carl Harder to draft the purchase and sale agreement for Thomas Motors, as well as the Management Contract. R. Vol. I, p.173 - p.174. The Management Contract set forth the employment rights and obligations as between Plaintiff and Thomas Motors. R.Vol. II, p.221 - p.223. The Management Contract included such terms as Plaintiff's job title, Plaintiff's job responsibilities, Plaintiff's compensation, and Plaintiff's duty to report to the shareholders, among other things. *Id.* Plaintiff has testified that the parties signed the Management Contract on approximately the first day of September 2000. R. Vol. II, p.292-93; p. 296-97. The remaining documents were signed by Plaintiff sometime later in September 2000.

It should be noted that Plaintiff disputes that the Agreement For Purchase and Sale of Business Assets and the Commercial Lease and Purchase Agreement, were signed by Defendants in September 2000. Instead, Plaintiff is making the rather outlandish accusation that Defendants actually signed these two agreements years after the fact (notwithstanding Defendants' testimony that they both signed and *dated* these agreements in September of 2000). Of course, Defendants dispute the factual assertions made by Plaintiff concerning the signing of the Agreement for Purchase and Sale of Business Assets, and the Commercial Lease and Purchase Agreement.

However, it does not appear from the record that Plaintiff is claiming that Defendants did not execute the Management Contract. In fact, Plaintiff's testimony is to the contrary. R. Vol. II., p 292- ***33** 93. Nonetheless, whether *Defendants* executed the Management Contract is of no consequence to the issues presented by this appeal. It is undisputed that *Plaintiff* actually signed the Management Contract. Even if this Court determines that a factual issue exists regarding whether the Management Contract was validly executed by all parties, the existence of the Management Contract, executed by Plaintiff, makes it clear that Plaintiff's employment was the subject of negotiation, that ultimately resulted in an express contract that was reduced to writing. It is important to remember that the Management Contract came into existence in the first place *only* upon the insistence of Plamtiff.

Furthermore, the employment negotiations, as reflected in the Management Contract did not make the transfer of Thomas Motors a condition of employment that would in any way affect the pay level of Plaintiff's salary. It is also undeniable and undisputed that Plaintiff was actually paid his compensation pursuant to the Management Contract that he both negotiated and signed:
Q. *Well, one thing that was enacted under this management contract is the amount that it talked about as your compensation. You were paid that amount thereafter*?

A. *My salary*?

Q. *Right*.

A. *Yes*.

Q. So at least that part of the management contract was continuing, ongoing, agreed to and followed up with?

A. I believe that was in the same time frame, but by the time that Carl Harder was no longer with us and this never came back to me in any way, shape or form as far as copies and --

***34** Q. All I'm asking about is one of the things this management contract says is what your salary is going to be from that date forward?

A. Yes.

Q. *And that was in fact your salary from that date forward*?

A. *I believe that's right*.

R. Vol. V., p. 1000 (emphasis added). In other words, it is undisputed that Plaintiff had an express employment contract with Defendants. Plaintiff was compensated fully and fairly for his employment services pursuant to that contract. *Id.* In fact, Plaintiff continued to receive his negotiated salary for the remainder of his employment with Thomas Motors. [5]

In Appellant's Brief, Plaintiff basically alleges that the purported "benefit" inequitably received by Defendants was Plaintiff's efforts in working extra hard and allegedly being underpaid as an employee for his efforts. Plaintiff does not, however, address the fact that this type of alleged benefit does not give rise to a claim for unjust enrichment as a matter of law. Idaho law clearly provides that a party cannot make recovery for unjust enrichment "where there is an enforceable express contract *already covering the same subject matter*." *See Vanderford Co., Inc. v. Knudson*, 144 Idaho 547, 558, 165 P.3d 261, 272 (2007) (emphasis added). *See also,* ***35** *Blaser v. Cameron*, 121 Idaho 1012, 829 P.2d 1361 (Ct. App. 1991); *Marshall v. Bear*, 107 Idaho 201, 687 P.2d 591 (Ct. App. 1984); *Triangle Min. Co., Inc., v. Stauffer Chemical Co.*, 753 F.2d 734 (9th Idaho 1985). "Equity does not intervene *when an express contract prescribes the right to compensation*." *Vanderford*, 144 Idaho at 558, 165 P.3d at 272 (emphasis added).

Regardless of whether plaintiff believes he was underpaid for his employment services, it is undisputed that he had an employment agreement with Thomas Motors for an agreed upon salary, and that Plaintiff was paid that salary. R. Vol V, p.1000; R. Vol. II, p.300. There was an existing contract that was in place covering the *very same subject matter* that is at issue in this unjust enrichment claim. Simply put, Plaintiff is legally precluded from seeking *additional* compensation for his employment services for which he was already paid, based upon a theory of quasi-contract. This type of rule only makes sense. Any other rule of law would open the litigation floodgates for disgruntled employees, who were promised a specific wage for their services, to seek greater retroactive compensation for their employment on the basis that they "worked harder" than other

similar employees. The law of unjust enrichment was certainly never intended to allow such results, which is why the law disallows unjust enrichment claims when there is an already existing contract in place to cover the same subject matter at issue.

As a matter of interest, Appellant's Brief cites to *Harbaugh v. Myron Harbaugh Motor, Inc.*, 100 Idaho 295, 597 P.2d 18 (1979) as supportive of his claim for unjust enrichment. The *Harbaugh* case is completely inapposite to the subject of unjust enrichment that is at issue in this matter. The *Harbaugh* case does not even involve a claim for unjust enrichment. In *Harbaugh*, the plaintiffs' father owned several businesses. *Id.* at 298, 597 P.2d at 21. The plaintiffs claimed that they left ***36** promising careers in other fields to take control of their father's business based upon their father's promise that his business would ultimately be transferred to them. *Id.* The plaintiffs further claimed that in addition to their salary, they were to receive certain credits from the business's net profits which would accrue towards the eventual purchase of the business. *Id.* There were no written documents of this alleged agreement. *Id.*

Eventually, the plaintiffs' father died. Their father's widow denied that such an agreement existed. *Id.* The widow maintained that the plaintiffs were merely employees of the business and that they were not entitled to any accrued credits for the future acquisition of the business. *Id.* However, the office manager for their father's business testified that the plaintiffs' father had informed her of the "salary plus accrued credit compensation scheme," and that the credits were to be used later in the purchase of the business. *Id.* The district court dismissed the plaintiffs' claim on summary judgment, apparently ruling that no contract existed which would give the plaintiffs credits toward the purchase of the business. *Id.* On appeal, the Idaho Supreme Court reversed the district court, finding that it was impossible to hold, as a matter of law, that no contract for the purchase of the business was entered into. *Harbaugh*, 100 Idaho at 298. The Supreme Court then remanded for further findings. Id.

The *Harbaugh* case simply bears no relation to the facts of the case presently before the Court. First, in *Harbaugh*, the plaintiffs were suing for damages for breach of contract, i.e., that they should be permitted to purchase the business at a reduced cost due to their accrued credits. In the instant case, Plaintiff is not suing for breach of contract damages. Although breach of contract was. one of Plaintiff's original causes of action, the District Court dismissed the claim, *and Plaintiff did* ***37** *not appeal this ruling*. Second, in *Harbaugh*, the plaintiffs did not ask for damages for unjust enrichment. Accordingly, the Supreme Court did not address the issue of unjust enrichment as it related to the plaintiffs' employment with their father's business. However, there are courts that *have* addressed the issue of unjust enrichment as it relates to employment situations similar to the one in the present case.

For example, the case *Ingram v. Rencor Controls, Inc.*, 256 F.Supp.2d 12 (D. Me. 2003) presents an almost identical situation to the present case. In *Ingram*, the plaintiff began working as a regional sales representative for the defendant corporation. *Id.* at 13. The plaintiff's duties required him to maintain and grow the business, specifically by increasing sales, bringing in employees, and managing the office. *Id.* at 14. At one point during the plaintiff's employment, one of the key shareholders of the defendant corporation quit. *Id.* The plaintiff became concerned about the viability of the company and considered leaving his employment with the defendant corporation. *Id.*

The remaining owner of the defendant corporation, Mr. Herlihy, sought to keep the plaintiff as an employee and had discussions with the plaintiff regarding the conditions under which the plaintiff would continue his employment with the defendant corporation. *Id.* The plaintiff stated that he would remain with defendant corporation only if he received a salary increase of more than 50%, a corporate officership, and a 10% share of stock in the company. *Id.* The parties then agreed that the plaintiff's salary would be raised to $100,000 and that he would be promoted to vice president if he stayed with the company. It was also communicated to the plaintiff that a transfer of 10% of the shares in the defendant corporation "was a fair amount." *Id.*

***38** According to the plaintiff, the raise, the promotion to vice president, and the delivery to him of 10% of the stock in the company comprised the entire agreement between himself and Mr. Herlihy. *Id.* Mr. Herlihy asserted that the parties never reached an agreement on the stock transfer and that they only discussed the possibility of such a transfer. *Id.* The parties did not memorialize any agreement in writing and no notes were made. *Id.* However, both the plaintiff and Mr. Herlihy understood

that the stock could not be issued until a dispute with the previous shareholder was resolved, which could be as long as two years. *Id.* at 15.

Mr. Herlihy and the plaintiff would meet on a yearly basis to discuss and fix the terms of the plaintiff's employment. The plaintiff did not ever receive his 10 percent share of stock in the defendant company. Eventually, the plaintiff resigned, after which he sued the defendant corporation for, among other things, breach of contract for the failure to issue the stock shares. The *Ingram* court dismissed the contractual claim for the 10% stock transfer. The *Ingram* court then proceeded to analyze the plaintiff's claim for damages based upon unjust enrichment. *Id.* at 22. The *Ingram* court first identified the elements of a claim for unjust enrichment (which are identical to the elements for unjust enrichment in Idaho). *Id.* The *Ingram* court next recognized, as does Idaho, that "the existence of a contractual relationship precludes recovery on a theory of unjust enrichment." *Id.*

The *Ingram* court recognized that the controlling issue was whether the plaintiff and the defendant had an express employment relationship that would prevent the plaintiff from prevailing on a claim of unjust enrichment. The court first acknowledged that the plaintiff had been "compensated in this case, and he has been compensated pursuant to a valid employment contract, albeit an oral one." *Id.* at 23. Furthermore, the plaintiff continued to receive raises in his salary. The ***39** plaintiff did not argue that he did not receive his agreed-upon salary. *Id.* The plaintiff argued that he did not receive the stock transfer allegedly agreed to by the parties as part of the overall agreement.

The *Ingram* court acknowledged that the parties disputed the existence of an agreement granting the plaintiff a 10% share in the defendant corporation. Nonetheless, the court ruled that the plaintiff's employment agreement precluded him from recovery of the stock shares. The court stated the following:
Although it seems harsh to deny Plaintiff this form of compensation if, in fact, he was promised it, the Court cannot allow recovery "[w]here the parties have made a contract for themselves, covering the whole subject matter." Allowing recovery under a theory of unjust enrichment *"would then be an impermissible end run around a voluntary structuring of relationships and their consequences."* Therefore, Plaintiff's claim of unjust enrichment with respect to the stock transfer fails."

*Id.* at 24. (citations omitted) (emphasis added).

Likewise, in the present matter, Plaintiff and Defendants had a valid and enforceable employment agreement. In 1997, Plaintiff was offered a monthly salary of $2,500, as well as benefits, to act as general manager for Thomas Motors. Plaintiff accepted the offer and was paid according to the agreement. Roughly a year and a half later, in 1999, Plaintiff received a substantial raise in his salary for his employment services. Plaintiff accepted the raise and continued to work as general manager for Thomas Motors, at a salary rate commensurate with as much as he had ever made in his working life (while working in towns larger than Emmett, Idaho). In 2000, Plaintiff demanded a written Management Contract. The Management Contract expressly set forth the terms of Plaintiff's employment, including Plaintiff's responsibilities, and included an additional raise in ***40** compensation. Plaintiff signed the agreement. It is undisputed that, thereafter, *Plaintiff was paid according to the agreement*. R. Vol. V, p.1000. The agreement did not provide for additional compensation if Plaintiff worked extra-hard or put in long hours.

Plaintiff now apparently regrets the employment contract he agreed to. Plaintiff alleges he provided substantially more value to Thomas Motors than what he was compensated for.[6] As a result Plaintiff seeks damages for such unjust enrichment. Plaintiff's argument in this regard is troubling on a number of levels. First, Plaintiff fails to acknowledge that damages for unjust enrichment are based upon an implied-in-law contract, or quasi-contract. This type of fictional contract will only be found to exist *in the absence of an express contract*. As set forth above, it is undisputed that Plaintiff entered into, and was compensated for, an express employment contract with Thomas Motors.

The second troubling aspect of Plaintiff's argument, is that it would open up the door for a flood of disgruntled employees to sue their employers for the *perceived* value of their work, rather than the *bargained-for* contractual value of their work. Taken to its logical extension, Plaintiff's theory of recovery in this regard would permit any employee who simply claims that he or

she worked "extra hard" for his or her employer to maintain an action for unjust enrichment. Such an argument should fail for obvious reasons. In the present matter, Plaintiff had an express contract of employment. He was paid pursuant to that contract. Plaintiff's claim for unjust enrichment must ***41** fail. The Court should affirm the District Court's order granting Defendants' Motion for Summary Judgment.

### B. *THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN AWARDING DEFENDANTS THEIR ATTORNEY'S FEES.*

#### 1. *Standard of Review.*

In Idaho, when an action is brought to recover damages pursuant to a commercial transaction, attorney's fees must be awarded to the prevailing party. *Idaho Code* § 12-120(3) states:

> In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, *the prevailing party shall be allowed a reasonable attorney fee* to be set by the court, to be taxed and collected as costs.

*Idaho Code* § 12-120(3) (1998) (emphasis added). The statute means just what it says, that attorney fees "*shall*" be awarded. This Court has repeatedly held that "*Idaho Code* § 12-120(3) mandates an award of attorney fees to the prevailing party in a suit involving a commercial transaction." *Hayden Lake Fire Protection Dist. v. Alcorn*, 141 Idaho 307, 313, 109 P.3d 161, 167 (2005). *See also, Tentinger v. McPheters*, 132 Idaho 620, 624, 977 P.2d 234, 238 (Ct. App. 1999) (holding that "Attorney's fees are *mandatory* for actions to recover on a contract relating to the purchase of services or any commercial transaction pursuant to *I.C.* 12-120(3)."

In the present matter, there is no dispute on appeal that Plaintiff's Complaint presented issues relating to a commercial transaction. Likewise, there is no dispute on appeal that Defendants were the prevailing party, having achieved a dismissal on each of Plaintiff's causes of action. Accordingly, attorney's fees must be awarded to Defendants in this action. The District Court did ***42** not err in determining that an award of attorney's fees is appropriate.

#### 2. *The District Court Understood the Requirements of Rule 54(e) and Made a Reasoned Decision within the Outer Boundaries of Its Discretion.*

As stated above, Plaintiff does not argue on appeal that the District Court erred in awarding Defendants their attorney's fees. Rather, Plaintiff appeals the *amount* of fees actually awarded by the District Court and requests a reduction in the amount of attorney's fees awarded. In sum, the Plaintiff complains that "the District Court's award of fees in this case was unreasonable and excessive and must be reduced." *Appellant's Brief*, p. 21.

Under *Idaho Code* § 12-120(3) the prevailing party is entitled to a "reasonable attorney fee." *Daisy Mftg. Co. v. Paintball Sports, Inc.*, 134 Idaho 259, 262-63, 999 P.2d 914, 917-18 (Ct. App. 2000). *See also, Kelly v. Hodges*, 119 Idaho 872, 876, 811 P.2d 48, 48, 52 (Ct. App. 1991) (stating that the court must act consistent with *I.R.C.P.* 54(e)(3) in the determination of reasonable attorney fees). Furthermore, the District Court is required to base its determination of reasonableness upon Rule 54(e)(3), which sets forth numerous factors which the court must take into account when making an award of attorney's fees. The Rule states: In the event the court grants attorney fees to a party or parties in a civil action it shall consider the following factors in determining the amount of such fees:

(A) The time and labor required.

(B) The novelty and difficulty of the questions.

(C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.

(D) The prevailing charges for like work.

(E) Whether the fee is fixed or contingent.

(F) The time limitations imposed by the client or the circumstances of the case.

***43** (G) The amount involved and the results obtained.

(H) The undesirability of the case.

(I) The nature and length of the professional relationship with the client.

(J) Awards in similar cases.

(K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.

(L) Any other factor which the court deems appropriate in the particular case.

*I.R.C.P.* 54(e)(3).

Lastly, the District Court has discretion in determining a reasonable attorney fee pursuant to 54(e)(3). *See Pocatello Auto Color, Inc. v. Akzo Coatings, Inc.*, 127 Idaho 41, 47, 896 P.2d 949, 955 (1995) (stating that the "calculation of reasonable attorney fees is within the discretion of the trial court"); *Garnett v. Transamerica Ins. Servs.*, 118 Idaho 769, 784, 800 P.2d 656, 671 (1990).

Upon appeal, "An award of attorney fees under *I.C.* § 12-120(3) is reviewed for an **abuse** of discretion." *P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust*, 144 Idaho 233, 239, 159 P.3d 870, 876 (2007). *See also, Fox v. Mountain West Elec, Inc.*, 137 Idaho 703, 712, 52 P.3d 848, 857 (2002). This Court applies a three part test to determine whether the District Court **abused** its discretion. These three factors include:

> (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of this discretion and consistent with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason.

*Id.*

In the present case, the decision of the District Court satisfies all of the requirements under Rule 54(e). The District Court first recognized that the calculation of reasonable attorney fees was within its discretion. R. Vol. VI, p.1176. The District Court further acknowledged that it was ***44** required to consider each and every factor set forth in Rule 54(e)(3). R. Vol. VI, p.1176. In the instant case, Defendants' attorneys presented the District Court with a comprehensive brief setting forth the time spent on each issue in this case, the amount charged by each attorney assisting on the case, and an affidavit attesting to the reasonableness of the rates charged. R. Vol. VI, p.1092 - p.1129. Defendants further provided the District Court with a detailed analysis of the fees charged in this matter as they related to each of the elements contained in Rule 54(e)(3). R. Vol. VI, p.1125 - p.1128. It

is noteworthy, that Defendants did not actually submit *all* of the fees incurred by Defendants in defending Plaintiff's claims. Tr. Vol. I, p. 150, l. 18 - p. 152, l.4.

In arriving at its opinion, the District Court stated that it had, in fact, considered each of the factors listed in 54(e)(3). Specifically, the District Court stated the following:
*After considering the record in this action* ***and applying the factors set forth in I.R.C.P. 54(e)(3)****,* the court awards Defendants attorney fees in the amount of $115,749.20. Although Plaintiff objects to the reasonableness of the attorney fees, Defendants were in the position that they had to respond to and defend against the litigation driven by the Plaintiff. A very significant amount of time and labor had to be expended by Defendants to conduct discovery, to respond to the activity of Plaintiff's counsel, and to raise the matters Defendants believed were important. From the Court's own perspective, this case has demanded a significant amount of time on a myriad of matters. *The Court certainly cannot find that Defendants were wasteful in their approach to this litigation, caused unnecessary expense, or were not reasonable in the way they conducted this lawsuit. The Court finds that the attorney fees claimed by the Defendants are reasonable.*

R. Vol. VI, p.1177-78 (emphasis added). Plaintiff is critical of the District Court's analysis since, in Plaintiff's estimation, none of the issues in this case were novel or complex. While the novelty or difficulty of the questions involved in a case is *one* factor under Rule 54(e)(3), the District Court based its decision upon *all twelve factors* enumerated in the Rule. Contrary to Plaintiff's argument, ***45** it is not necessary for the District Court to delineate its reasoning, within the four corners of its memorandum, with respect to each individual factor in Rule 54(e)(3):
*Rule 54(e)(3) does not require the district court to make specific findings in the record, only to consider the stated factors* in determining the amount of the fees. When considering the factors, courts need not demonstrate how they employed any of those factors in reaching an award amount.

*Lettunich v. Lettunich*, 145 Idaho 746, 750, 185 P.3d 258, 262 (2008) (quoting *Smith v. Mitton*, 140 Idaho 893, 902, 104 P.3d 367, 376 (2004)).

In this instance, the District Court clearly perceived the award of attorney fees as discretionary. The District Court properly acted within the boundaries of its discretion and consistent with the applicable legal standards. The District Court arrived at its decision by an exercise of reason based upon the Rule 54(e)(3) factors, as well as the information submitted to it by the parties. Plaintiff now urges this Court to simply replace the District Court's finding with its own determination of reasonableness. Such a position is not consistent with the Idaho Supreme Court's review of discretionary matters. “To determine if the district court **abused** its discretion, this Court focuses on *the process* by which the district court reached its decision.” *Palmer v. Spain*, 138 Idaho 798, 800, 69 P.3d 1059, 1061 (2003) (emphasis added). It is obvious from the record that the District Court in this matter religiously followed the proper process for an award of attorney's fees. The District Court did not **abuse** its discretion, and as such, its award of attorney fees should be affirmed.

## ***46 V. *CONCLUSION.***

For the foregoing reasons, Defendants respectfully request that this Court affirm the rulings of the District Court and award Defendants costs and attorneys' fees for this appeal.

Footnotes

1 Many of the facts alleged by Plaintiff are disputed by Defendants. The testimony of Plaintiff and Defendant Ron Thomas is often diametrically opposed. However, for purposes of this appeal, as with the various motions for summary judgment before the District Court below, any time that there is a factual dispute between Plaintiff's testimony and Ron's testimony, Defendants will cite to

Plaintiff's version of the facts so that the Court is presented with the undisputed facts so that the record may be construed in the light most favorable to Plaintiff.

2 The written agreements Plaintiff signed in September 2000 were quite different than the alleged oral agreement Plaintiff had with his father dating back to July of 1997. R. Vol. II, p.299. In particular, the written agreements regarding Plaintiff's purchase of Thomas Motors in September of 2000, were vastly different in several material respects from the oral agreement Plaintiff alleges he previously had with his father. Some of the differences include the following:

FN1. The written agreement to purchase the assets of Thomas Motors now had a specific set price of $850,000. R. Vol I, p. 184.

FN2. The agreements reflected that Plaintiff was no longer going to buy the business when Ron retired at or about 63 years old, but would instead take over the business just one year later, specifically September 1, 2001. R. Vol. I, p.181.

FN3. Part of the written agreements also encompass the plaintiff purchasing land upon which the new car dealership known as Thomas Motors was located, and it too had a very specific purchase price. R Vol. I, p. 193 - p. 194.

3 In Plaintiff's deposition, Exhibit 3 was the Agreement for Purchase of Sale of Business Assets; Exhibit 4 was the Management Contract; and, Exhibit 5 was the Commercial Lease and Purchase Agreement. R. Vol. II, p.271.

4 It is interesting to note that Plaintiff openly acknowledges he made no effort to comply with any of the requirements imposed upon him by either the Agreement for Purchase and Sale of Business Assets, or the Commercial Lease and Purchase Agreement:

Q. Just answer my question. I know you want to make your pitch here, but Pm trying to get an answer from your perspective. You made no effort to comply with any of the requirements that would otherwise have been imposed on you in Exhibits 3 and 5 after you had that conversation with your dad; is that correct?

A. *That would be accurate.*

R. Vol. II, p. 302 (emphasis added).

5 It is notable that *Idaho Code* § 45-610 would require Defendants to notify Plaintiff prior to reducing his salary from what had been negotiated in the Management Contract. Plaintiff does not claim that his salary was ever reduced, nor that he received any notice that his salary would be reduced. The undisputed evidence before the Court is that Plaintiff bargained for his salary and received his "bargained-for" salary from the date the Management Contract was signed until Thomas Motors was sold. R. Vol. V., p.1000. Nothing in the Management Contract rendered Plaintiff's receipt of salary, Defendants' payment of salary, or the amount of Plaintiff's salary dependent upon the future transfer of the automobile dealership.

6 While plaintiff loosely refers to an unjust enrichment claim against "the Defendants," the "benefit" for employment services would obviously be to the employer, Thomas Motors, Inc., not the individual defendants.

**End of Document**

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